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OFFICE OF PETITIONS

In re Patent No. 7,842,344  
Issued: November 30, 2010  
Application No. 10/788,414  
Filed: March 1, 2004  
Attorney Docket No. 08384740235

DECISION ON APPLICATION  
FOR PATENT TERM ADJUSTMENT

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT FOR PATENT UNDER 37 C.F.R. §1.705(b)," filed January 28, 2011. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from 1339 to 1451 days. Since the request is after issuance, the request is being treated under 37 CFR 1.705(d).

The request for review of the patent term adjustment is **DISMISSED**.

Patentees are given **THIRTY (30) DAYS or ONE (1) MONTH, whichever is longer**, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

On November 30, 2010, the above-identified application matured into U.S. Patent No. 7,842,344 with a revised patent term adjustment of 1339 days. On January 28, 2010, patentees timely submitted this application for patent term adjustment (with required fee), asserting that the correct number of days of Patent Term Adjustment is 1451 days.

Applicants argue that while a Restriction Requirement was mailed May 4, 2006, it was vacated by the Examiner, and a new Restriction Requirement was mailed August 24, 2006. Therefore, the number of days between the filing date (March 1, 2004) and issuance of a first Office Action (August 24, 2006) is 480 days. Thus, the total PTA for the present patent should be 1451 days.

Applicant's argument is not persuasive. 37 CFR 1.702(a)(1) provides that: Failure to take certain actions within specified time frames. Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to:

Mail at least one of a notification under 35 U.S.C. 132 or a notice of

allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) or fulfilled the requirements of 35 U.S.C. 371 in an international application;

In this instance, the Office action mailed May 4, 2006 was mailed within fourteen months and 368 days of the filing date. As the Office failed to take action within the time provided for in 37 CFR 1.702(a)(1), an adjustment to the Patent Term Adjustment was made in the amount of 368 days. The fact that the Office subsequently mailed a further Office action withdrawing the May 4, 2006 Office action does not negate the fact that the Office took action within the meaning of 37 CFR 1.702(a)(1). Accordingly, entry of an additional period of adjustment for examination delay pursuant to 37 CFR 1.702(a)(1) is not warranted.

In view thereof, the patent term adjustment indicated in the patent is properly reflected.

The Office acknowledges the submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Telephone inquiries specific to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.



Patricia Faison-Ball  
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Office of Petitions